

SENATE BILL REPORT

SB 5234

As of January 12, 2023

Title: An act relating to a lien claimant's responsibilities when filing mechanics' and materialmen's liens.

Brief Description: Addressing a lien claimant's responsibilities when filing mechanics' and materialmen's liens.

Sponsors: Senator Shewmake.

Brief History:

Committee Activity: Labor & Commerce: 1/19/23.

Brief Summary of Bill

- Requires a construction lien claim to include a concise statement of facts stating why the notice is being filed and include substantiating documentation.
- Requires a lien claimant to respond to an owner's request for clarification or additional information regarding the new requirement within 14 days.
- Permits a court to consider a lien claimant's failure to respond within the 14-day time period when determining whether a lien is frivolous or advanced without reasonable cause.

SENATE COMMITTEE ON LABOR & COMMERCE

Staff: Matt Shepard-Koningsor (786-7627)

Background: Mechanics' and Materialmen's Liens. Washington law authorizes any person furnishing labor, professional services, materials, or equipment for the improvement of real property to file a lien upon the improvement for the contract price of labor, professional services, materials, or equipment furnished at the instance of the owner, the agent, or

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construction agent of the owner. Mechanics' and materialmen's liens are subject to numerous requirements under the law, which include, without limitation, requirements of notice, registration, priority, release, frivolous claims, recording, and others.

Pre-Claim Notice. Unless otherwise exempted, a lien claimant must provide written notice of the right to claim a lien on the improvement of real property to the owner or apparent owner of such real property, and the prime contractor in certain cases. The notice may be given at any time but only applies to professional services, materials, or equipment supplied within 60 days of mailing, delivering, or serving the notice. This time period is ten days in the case of new construction of a single-family residence. A lien notice form is provided in statute.

Recording Claim Notice. A lien claimant must file and record, in the county where the subject property is located, the notice of claim of lien within 90 days after the claimant has ceased to furnish labor, professional services, materials, or equipment, or the last date on which employee benefit contributions were due. The notice of claim of lien must include the:

- name, phone number, and address of the claimant;
- first and last date on which the labor, professional services, materials, or equipment was furnished or employee benefit contributions were due;
- name of the person indebted to the claimant;
- street address, legal description, or other description reasonably calculated to identify, for a person familiar with the area, the location of the real property to be charged with the lien;
- name of the owner or supposed owner of the property if known, and if not known, that fact stated; and
- principal amount for which the lien is claimed.

The lien claimant must give a copy of the claim to the owner or supposed owner within 14 days of recording, and failure to do so results in forfeiture of any right the claimant may have to certain attorneys' fees and costs against the owner.

Frivolous Liens. An owner of real property subject to a lien claim or contractor, subcontractor, lender, or lien claimant who believes a lien claim is frivolous, advanced without reasonable cause, or clearly excessive may file a motion in the superior court for the county where the property or some part of the property is located, for an order requiring the lien claimant to appear and show cause why the requested relief should not be granted. If a lien claimant fails to appear, the lien must be released permanently and the lien claimant must pay the costs and reasonable attorneys' fees requested by the applicant. If a court determines the lien is frivolous or advanced without reasonable cause, it must issue an order releasing the lien and awarding costs and reasonable attorneys' fees to the applicant. If a court determines the lien is clearly excessive, it must issue an order reducing the lien and awarding the same. If a court determines a lien is not frivolous, advanced without reasonable cause, or clearly excessive, it must issue an order stating so and award costs and

reasonable attorneys' fees to the lien claimant.

Summary of Bill: Recording Claim Notice. The notice of claim of lien must include a concise statement of facts stating why the notice is being filed and include substantiating documentation. If an owner requests clarification or additional information from the lien claimant regarding the statement of facts or documentation provided, the lien claimant must respond to the owner within 14 days of the owner's request, and may respond through their agent or attorney.

Frivolous Liens. The lien claimant's failure to respond within 14 days may be considered by a court when determining whether a lien is frivolous and made without reasonable cause.

Appropriation: None.

Fiscal Note: Requested on January 11, 2023.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.